

HOUSE BILL REPORT

HB 2489

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to issuing citations to public fire departments by the department of labor and industries.

Brief Description: Issuing citations by the department of labor and industries.

Sponsors: Representatives Thompson, Koster, Elliot, D. Schmidt, Cairnes, McMahan, Chandler, Crouse, Cooke, Buck, Fuhrman, McMorris, Hatfield and Sheldon.

Brief History:

Committee Activity:

Commerce & Labor: 1/22/96, 1/29/96 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Goldsmith; Horn and Lisk.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Chris Cordes (786-7117).

Background: The Department of Labor and Industries administers and enforces the Washington Industrial Safety and Health Act (WISHA). The act directs the department to adopt rules governing safety and health standards for workplaces covered by the act. WISHA applies to substantially all employment performed at workplaces in Washington, including both private and public employment.

Washington is a "state plan state" under the federal Occupational Safety and Health Act (OSH Act). As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized under the OSH Act. Although the OSH Act does not apply to public employers, state plans must contain assurances that the state will, to

the extent permitted by its law, maintain a safety and health program for public employees that is as effective as the standards in the approved plan.

WISHA standards include general safety and health standards that apply to most industries, as well as additional specific safety standards for certain industries, such as fire fighting. The specific standards for fire fighting apply to all activities related to providing fire protection services under WISHA's jurisdiction. Among other requirements, the standards require fire department employers to furnish and require the use of appropriate safety devices and safeguards. The department evaluates whether this rule is violated by reference to the standards published by the National Fire Protection Association.

A covered employer may be cited, and be subject to civil penalties, if the employer violates a requirement of WISHA, the rules adopted under WISHA, or the conditions of an order granting a variance.

Summary of Substitute Bill: Under the Washington Industrial Safety and Health Act, the Department of Labor and Industries may not issue a citation to a public fire department employer using a standard contained in a national code as a basis for evidence of a violation, unless that national code has been incorporated by reference into the statute or rules adopted under the statute.

Substitute Bill Compared to Original Bill: The substitute bill deletes language that would have prohibited the practice of issuing citations based on nonadopted standards. New provisions are added stating that the Department of Labor and Industries may not issue a citation to a public fire department employer if the citation uses a national code standard as a basis for evidence of a violation, unless the standard has been incorporated by reference into law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill addresses a "fairness" issue by making it clear to public fire departments the workplace safety standards with which these employers must comply. Having clear rules will improve the relationship between the employers and the firefighters. Without changes, the current adversarial environment will continue and safety issues will not be addressed. Team work is needed to develop rules that everyone understands. If there is no specific rule in place, instead of issuing a "safe place" citation, the Department of Labor and Industries could issue recommendations based on national code standards. It is particularly onerous to voluntary departments

when the violation refers to a standard in the National Fire Protection Association code of 12 volumes and 283 different standards. It is also difficult to prepare budgets when the fire district does not know what standards might be cited.

Testimony Against: The current fire fighting safety standards are a product of an advisory committee. A consensus process is used to recommend safety rules. It would be a tremendous burden to incorporate all of the national safety codes in Washington's code. Many of the national standards are for tasks that only a few departments perform; the other departments do not need these safety rules in their codes. Any change might raise issues about compliance with OSHA requirements. The bill is of grave concern because it might severely compromise the safety of fire fighters at a fire scene. The Department of Labor and Industries needs all the tools possible sometimes to deal with recalcitrant administrators. Some fire fighter deaths might possibly have been avoided if national standards had been complied with. The Department of Labor and Industries has already offered a variance procedure to allow delayed enforcement of the new standards. There is some fear that the bill might divert attention from safety to litigation. Before the Department of Labor and Industries can cite under the "safe place" standard, the department must show that four criteria are met. In the last six years, there were eight "safe place" citations in 71 investigations.

Testified: (In favor) Representative Bill Thompson, prime sponsor; and Duane Malo and Otto Jensen, Washington Association of Fire Chiefs. (Opposed) Jim Cason, Washington State Council of Fire Fighters; Jon Gillis, Seattle Fire Fighters Union; Rodney Jones; and Ken High. (With concerns) Mark Brown, Department of Labor and Industries.